

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TQ DELTA LLC, :
: Plaintiff, :
: v. : Civil Action No. 13-1835-RGA
: PACE PLC, et al., :
: Defendants. :

TQ DELTA LLC, :
: Plaintiff, :
: v. : Civil Action No. 13-1836-RGA
: ZHONE TECHNOLOGIES INC., :
: Defendant. :

TQ DELTA LLC, :
: Plaintiff, :
: v. : Civil Action No. 13-2013-RGA
: ZYXEL COMMUNICATIONS INC., :
et al., :
: Defendants. :

MEMORANDUM ORDER

The issue raised in the discovery disputes is whether Defendants have “control” over Broadcom’s technical specifications and documents. The disputed documents are stored on Broadcom’s servers. To the extent Defendants have access to these specifications and

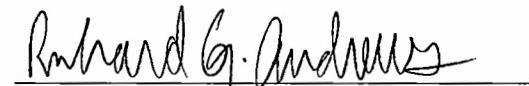
documents, that access has not to date been exercised. Plaintiff wants Defendants to access the requested information and retrieve it for Plaintiff. Plaintiff does not argue that Defendants presently have possession or custody of the items at issue. *See Fed. R. Civ. P. 34(a)(1).*

Broadcom and Defendants have NDA agreements, which, by letter dated September 10, 2015, have been filed on the docket. I have reviewed them.

Broadcom and Defendants are unrelated, independent corporations. The NDAs appear to keep all legal rights to the specifications and documents with Broadcom. NDA § 12. Thus, for the specifications and documents that are at issue here, I do not think Defendants have control of the items that Plaintiff seeks. *See generally Inline Connection Corp. v. AOL Time Warner Inc.*, 2006 WL 2864586 (D.Del. Oct. 5, 2006). I think there is a difference between having the present ability to access the items and having control of the items.

Plaintiff's request is denied.

IT IS SO ORDERED this 28 day of September 2015.



United States District Judge